

MARY ANN SMITH
Deputy Commissioner
MIRANDA LEKANDER
Assistant Chief Counsel
LINDSAY B. HERRICK (State Bar No. 224986)
Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 445-3682
Facsimile: (916) 445-6985
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRD NO.: 138425
THE COMMISSIONER OF BUSINESS)	STATEMENT IN SUPPORT OF NOTICE OF
OVERSIGHT,)	INTENTION TO ISSUE ORDER LEVYING
Complainant,)	PENALTIES PURSUANT TO
)	CORPORATIONS CODE SECTION 25252
v.)	
JMR CAPITAL MANAGEMENT, INC.,)	
Respondent.)	

The Commissioner of Business Oversight (Commissioner) finds as follows:

I.

INTRODUCTION

1. Respondent JMR Capital Management, Inc. (JMR Capital) is an investment adviser licensed by the Commissioner on June 14, 1994 pursuant to the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.). JMR Capital's principal place of business is 44 Montgomery Street, Suite 3705, San Francisco, California 94104.

II.

STATEMENT OF FACTS

2. On or about April 4, 2016, the Commissioner commenced a regulatory examination (2016 examination) of JMR Capital's books and records which revealed that JMR Capital continued to commit violations previously discovered during regulatory examinations in or about July 1996 (1996 examination) and February 3, 2003 (2003 examination), including failure to maintain books and records in violation of California Code of Regulations, title 10, section 260.241.3, and failure to file annual reports with the Commissioner in violation of California Code of Regulations, title 10, section 260.241.2. In addition, JMR Capital failed to make, keep and submit documents for the specified time period required by the Commissioner in violation of Financial Code section 25241.

A. Books and Records Violations

3. During the 2016 examination, JMR Capital was asked to provide financial books and records for the periods of January through December 31, 2015 and for January through February 29, 2016, as well as investment advisory agreements and other firm documents. The books and records revealed that JMR Capital did not maintain a general ledger during this period of time.

4. Corporations Code section 25241 states in pertinent part:

(a) Every broker-dealer and every investment adviser licensed under Section 25230 shall make and keep accounts, correspondence, memoradums, papers, books, and other records and shall file financial and other reports as the commissioner by rule requires...

5. California Code of Regulations, title 10, section 260.241.3 states in pertinent part:

(a) Every licensed investment adviser shall make and keep true, accurate and current the following books and records relating to such person's investment advisory business:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
...

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.
...

1 6. On April 12, 2016, a three-day field examination was commenced at JMR Capital's
2 office in San Francisco, at which time, a second request was made for JMR Capital's general ledger.
3 JMR Capital responded that it would attempt to obtain a general ledger and make it available the
4 following day. On April 13, 2016, a third request was made to JMR Capital for its general ledger,
5 which responded saying it was not available for examination. On April 14, 2016, JMR Capital was
6 asked again if its general ledger was available. JMR Capital stated that its accountant had set up a
7 QuickBooks ledger which could be provided. No general ledger, however, was provided during the
8 three-day field examination.

9 7. Because no general ledger was provided, the Commissioner was unable to verify the
10 accuracy of JMR Capital's financial books and records. For example, the information provided in
11 JMR Capital's income statement and balance sheet could not be confirmed or traced to the general
12 ledger. In addition, assets reported in JMR Capital's February 29, 2016 balance sheet were not
13 reflected in its February 2016 bank statement, and a variance of approximately \$10,200 between the
14 balance sheet and bank statement could not be explained by a reconciliation. As such, JMR Capital
15 also did not maintain or submit true or accurate cash reconciliations.

16 8. JMR Capital's failure to maintain a general ledger for years 2015 and 2016 are repeat
17 violations discovered during the 2003 examination. In a regulatory report dated June 30, 2016 (2016
18 regulatory report), JMR Capital was asked to submit a general ledger for the period of January 1 to
19 May 31, 2016 and to explain why corrective action had not been implemented as indicated in its
20 response to the 2003 examination. In addition, JMR Capital was asked to provide the cash
21 reconciliation, balance sheet and bank statement for the month ending May 31, 2016. JMR Capital
22 was instructed again in the 2016 regulatory report that its books and records are required to be
23 maintained on a current and accurate basis.

24 B. Annual Report Violations

25 9. The 2016 examination also revealed that JMR Capital failed to file annual reports for
26 the fiscal years ending December 2005 to December 2014. A copy of JMR Capital's annual report
27 for 2015 was provided during the 2016 examination.

28 10. California Code of Regulations, title 10, section 260.241.2 states in pertinent part:

(a) General Rule. Subject to the provisions of subsection (c) of this section, every licensed broker-dealer, and every licensed investment adviser subject to the provisions of Section 260.23.2 of these rules, shall file an annual financial report as follows:

...

(2) The annual report for an investment adviser shall contain a balance sheet, income statement, and computations of the minimum financial requirements required under Section 260.237.2 of these rules.

...

(4) The report shall be filed not more than 90 days after the investment adviser or broker-dealer's fiscal year end.

(5) Whenever the Commissioner so requires, a financial report shall be filed as of the date, and within the period, and in the form specified in the Commissioner's request. The Commissioner may require the financial report to be audited.

...

11. JMR Capital's failure to file an annual report is a repeat violation discovered in the 1996 examination and 2003 examination. JMR Capital was instructed in the 2016 regulatory report that annual reports are required 90 days after its fiscal year-end and was asked to explain why corrective action had not been implemented as indicated in its response to the 2003 examination.

III.

ORDER LEVING PENALTIES

12. JMR Capital's violations of the CSL found by the Commissioner are grounds to levy penalties. Corporations Code section 25252 provides in pertinent part:

The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

...

(b) Any broker-dealer or investment adviser that willfully violates any provision of this division to which it is subject, or that willfully violates any rule or order adopted or issued pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars (\$15,000) for each subsequent violation.

13. JMR Capital's violations of the CSL are reoccurring and willful for which it has failed to take corrective action despite previous assurances to the Commissioner to do so. JMR Capital's failure to maintain a general ledger for years 2015 and 2016 are repeat violations discovered during the 2003 examination for which JMR Capital promised to take corrective action as indicated in its

1 response to the 2003 examination, but which it did not correct. In addition, because no general ledger
2 was provided, the Commissioner was unable to verify the accuracy of JMR Capital's financial books
3 and records which also indicated a variance of approximately \$10,200 between its balance sheet and
4 February 2016 bank statement which could not be reconciled. Further, JMR Capital did not maintain
5 or submit true or accurate cash reconciliations and was instructed again in the 2016 regulatory report
6 that its books and records are required to be maintained on a current and accurate basis.

7 14. In addition, JMR Capital has consistently failed to timely submit an annual report for
8 fiscal years ending December 2005 to December 2015. JMR Capital's repeated failures to submit its
9 annual report were violations brought its attention in the 1996 and 2013 regulatory examinations for
10 which JMR Capital promised to take corrective action, as indicated in its response to the 2003
11 examination, but which it never corrected.

12 15. JMR Capital's violations are grounds, therefore, under Corporations Code section
13 25252 for the Commissioner to levy administrative penalties in the amount of \$30,000.00, including
14 \$5,000.00 for failure to make, keep and submit a general ledger and cash reconciliations in violation
15 of Corporations Code section 25241, \$10,000.00 for failure to maintain a general ledger, balance
16 sheet and income statements during the 2003 and/or 2016 regulatory examinations in violation of
17 California Code of Regulations, title 10, section 260.241.3, and \$15,000.00 for failure to timely
18 submit annual reports for fiscal years ending December 2005 to December 2015, in violation of
19 California Code of Regulations, title 10, section 260.241.2.

20 IV.

21 CONCLUSION

22 By reason of the foregoing, JMR Capital's violations of Corporations Code section 25241 and
23 California Code of Regulations, title 10, sections 260.241.2 and 260.241.3 found by the
24 Commissioner are grounds to issue an order to JMR Capital levying administrative penalties.

25 **WHEREFORE**, notice is hereby given of the Commissioner's intention to issue an order to
26 JMR Capital Management, Inc. levying administrative penalties pursuant to Corporations Code
27 section 25252, subdivision (b) in the amount of \$30,000.00, including:

28 a. \$5,000.00 for failure to make, keep and submit a general ledger and cash reconciliations in

- 1 violation of Corporations Code section 25241 or according to proof;
- 2 b. \$10,000.00 for failure to maintain a general ledger, balance sheet and income statements
- 3 during the 2003 and/or 2016 regulatory examinations in violation of California Code of
- 4 Regulations, title 10, section 260.241.3 or according to proof; and
- 5 c. \$15,000.00 for failure to timely submit annual reports for fiscal years ending December
- 6 2005 to December 2015 in violation of California Code of Regulations, title 10, section
- 7 260.241.2 or according to proof.

8 Dated: October 20, 2017
9 Sacramento, California

JAN LYNN OWEN
Commissioner of Business Oversight

11 By: _____
12 Lindsay Herrick
13 Counsel